

IN THE COURT OF CLAIMS OF OHIO

ERVIN TRIPLETT	:	
Plaintiff	:	
v.	:	CASE NO. 2002-09862-AD
OHIO STATE PENITENTIARY	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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FINDINGS OF FACT

{¶1} 1) During November, 1998, plaintiff, Ervin Triplett, an inmate, was transferred from the Southern Ohio Correctional Facility, (SOCF) to defendant, Ohio State Penitentiary (OSP). Although plaintiff's personal property was transferred with him, he has asserted he was denied any access to the property while incarcerated at OSP.

{¶2} 2) Plaintiff has asserted that when he arrived at OSP in November, 1998, he was deprived of multiple legal documents, legal publications, and religious items by defendant's staff. Additionally, plaintiff claimed seven books were confiscated from his possession by OSP personnel during December, 2000. According to plaintiff these confiscated books were subsequently destroyed. Plaintiff placed a total value of \$1,549.95 on all the property items he alleges are now missing. Plaintiff filed this complaint, on November 8, 2002, insisting his property was destroyed by defendant's employees. Consequently, plaintiff is seeking to recover the value of his alleged confiscated and destroyed property. Plaintiff was excused from paying a filing fee to prosecute this claim.

{¶3} 3) Plaintiff submitted documents establishing OSP employees confiscated sixteen books from his possession on December 20, 2000. The confiscated books were stored in the OSP property vault. Plaintiff filed an affidavit in which he stated five of his books were destroyed by OSP staff on or about September 26, 2002.

{¶4} 4) Defendant denied any liability in this matter. Defendant contended plaintiff has not produced sufficient evidence to show his property was lost or destroyed without proper authority by OSP personnel. Defendant also contended any claim for property loss which occurred prior to November 8, 2000 is barred by R.C. 2743.16, the appropriate statute of limitations. The court agrees.

{¶5} 5) Defendant's records show five books which had apparently been confiscated from plaintiff in November 2000 were subsequently destroyed pursuant to a forfeiture order issued by the Mahoning County Common Pleas Court.

{¶6} 6) On May 13, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff argued the sixteen books confiscated from him on December 20, 2000 were destroyed without his permission. Plaintiff has not provided evidence to show the books confiscated on December 20, 2000 were destroyed without proper authorization.

CONCLUSIONS OF LAW

{¶7} 1) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶8} 2) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶9} 3) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶10} 4) Plaintiff has no right to pursue a claim for lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has not right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1995), 84-09071.

{¶11} 5) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to

carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. In the instant claim, plaintiff has failed to prove defendant acted without proper authority in completing any destruction of contraband items.

{¶12} 6) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issues in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

{¶13} 7) Plaintiff has failed to prove, by a preponderance of the evidence, his property was confiscated and either destroyed or lost as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶14} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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